




STATE OF UTAH  
NATURAL RESOURCES & ENERGY  
Oil, Gas & Mining

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MEMORANDUM  
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TO: Board of Oil, Gas and Mining

FROM: Thomas N. Tetting, Engineering Geologist 

SUBJECT: Utah Mining Association Proposal Covering Guidelines for Surety Contracts Including Personal Guarantees

DATE: June 16, 1982

Attached please find a copy of a recently endorsed proposal from the Utah Mining Association. They would like to have the Division and the Board consider the ideas put forth as an initial "blueprint" for the development of the concept to allow the use of personal guarantees (and determining criteria) for surety contracts. I was on hand during the Executive Board Meeting of the Utah Mining Association to field questions regarding their member's concerns about the nature and appropriateness of this submittal. I suggest that they are extremely concerned about the exclusion of this personal guarantee concept from the realm of possible surety arrangements with the Division. Therefore, they have taken the effort to put forth the criteria listed in the proposal for the use of the personal guarantee in surety contracts. Hopes are that the Board of Oil, Gas and Mining will be able to decide at the June Executive Session whether or not to continue the use of these personal guarantees. The Board should also consider whether or not to accept the attached proposal or refer it to the Division for further development. A decision should be reached. If personal guarantees are to be continued in use, should the new criteria be established as a guideline (implemented by the Division and the Board) or should they be made a part of the Rules and Regulations as the attached proposal suggests?

It is my sincere hope that the Board will be able to discuss and decide upon these matters at the next Executive Session. Please call Ron Daniels if you have any questions.

Attachment

TNT/btb



PROPOSED GUIDELINES FOR SURETY CONTRACTS TO  
GUARANTEE RECLAMATION OBLIGATIONS

I. PURPOSE OF PROPOSAL.

The guarantee of reclamation obligations by surety contract is one of a number of alternative surety arrangements authorized under the Utah Mined Land Reclamation Act. The proposed guidelines herein establish a means to determine whether surety contracts are appropriate, based on the submittal of certain financial data to demonstrate financial stability. The purpose of the guidelines is to encourage qualified operators to commit to the cost of reclamation without having to bear the burden of setting aside financial resources which could be more productively used elsewhere.

The Mined Land Reclamation Act allows the Board of Oil, Gas, and Mining (the "Board") to approve a form of surety which may include "a written contractual agreement" (Utah Code Ann. §40-8-14(3)). In addition, the Board is required to consider the operator's financial status, assets within the state, history of performance, and facilities to carry out the work (Id.) These guidelines are intended to assist the Board in evaluating these factors as they may relate to such surety arrangements.



The legislature, in enacting §40-8-14(3), clearly intended to provide for flexibility in surety arrangements, which would allow the Board to ensure completion of reclamation obligations without unnecessary burdens on the operators. If an operator can demonstrate its continuing financial capability to comply with reclamation requirements, then there is no reason why the operator should be required to set aside needed funds or assets. This same consideration is reflected in the surety requirement regulations of a number of federal and state agencies which are discussed in more detail below.

Currently, Utah Code Ann. §40-8-14 is implemented by Rule M-5. The guidelines proposed herein would, if adopted, become a new Rule M-5A.

## II. SUMMARY OF PROVISIONS.

Essentially, the proposal would allow for a surety contract between the Board and the operator. In support of the application for such a contract, the applicant would be required to provide certain financial data to the Board through the Division of Oil, Gas, and Mining (the "Division"). If the applicant is a publicly held company, it would be required to provide to the Board copies of various filings made with the United States Securities and Exchange Commission, particularly the 10-K report, which details the current financial health of



the company. If the applicant is not a publicly held corporation, it would be required to submit to the Board a financial statement prepared by an independent accountant.

The purpose of the requirement to provide copies of Securities and Exchange Commission filings is to ensure that the Board has all of the available data with regard to the financial health of the application. The Securities and Exchange Commission rules require strict full disclosure of a corporation's financial structure including not only profit and loss information, but also information with regard to management, outstanding litigation or enforcement, company holdings, and other similar information.

Under the proposal, the Board would approve the surety contract application if the materials submitted with the application demonstrate that the applicant has net worth sufficient to satisfy the reclamation obligations, has assets in the State of Utah sufficient to satisfy a judgment for reclamation should it be necessary to litigate the contract agreement, and has the physical capability, including staff expertise, to complete reclamation.

An application may be disapproved or an agreement may be revoked or modified by the Board after notice to the operator and the opportunity for the operator to present evidence or information on the matter at a hearing before the Board, if the operator so desires.



### III. OTHER REGULATIONS.

The surety contract is essentially a self-bonding agreement. Such self-bonding arrangements are not unique. For example, the Environmental Protection Agency, the Office of Surface Mining Reclamation and Enforcement, and the Wyoming Department of Environmental Quality all have self-bonding regulations. In addition, the Nuclear Regulatory Commission is actively considering a self-bonding proposal for mill tailings.

All of the self-bonding regulations are based on the necessity to satisfy the regulatory authority of the financial stability of the applicant. The various financial criteria in these regulations are tailored to the particular purpose of the regulation. For example, in the Environmental Protection Agency regulations (40 CFR Part 264 (Subpart H) and 265 (Subpart H); 47 Fed. Reg. 15032-15074 (April 7, 1982)), the EPA has established detailed financial test criteria to support the financial assurance relating to closure and post-closure of hazardous waste treatment, storage, and disposal facilities. The financial tests consist of two basic alternatives, one of which is tied to the bond rating used by Standard and Poor's or Moody's. In its preamble to the regulations, the EPA indicates that the purpose of the bond rating criteria is to accommodate utilities, which, because of unique financial structures, cannot use the more traditional financial criteria (47 Fed. Reg. 15034).



It should be noted that the EPA regulations are designed not only to provide for financial assurance for the closure of a hazardous waste management facility but also to provide assurance for the post-closure maintenance of the facility into the indefinite future. In addition, the EPA is concerned with literally thousands of hazardous waste management facilities, with the result that it cannot deal with case-by-case determinations as well as an agency which regulates a much smaller number of facilities.

The OSM self-bonding regulations (30 CFR Subchapter J; 45 Fed. Reg. 52306 (August 6, 1980)) require not only evidence of financial stability for self-bonding, but also collateral or security interests in favor of OSM sufficient to guarantee the self-bond. OSM operates under a very detailed and extensive set of reclamation regulations which do not allow much flexibility with regard to designing a reclamation plan. As a result, OSM has imposed a very strict set of self-bonding regulations. It should be noted, however, that OSM has proposed new bonding regulations (40 Fed. Reg. 45082 (September 30, 1981)) which would eliminate the requirement for putting up personal or real property as collateral to back the self-bonding arrangement.

The NRC is considering self-bonding regulations for uranium mill tailings reclamation. At this point, the NRC has not formally made any proposal, although it has indicated it is



examining a number of self-bonding regulations. It should be noted that the NRC is concerned not only with reclamation of mill tailings but also with long-term stabilization and maintenance. In this regard, it should be noted that the Uranium Mill Tailings Control and Reclamation Act provides for the transfer to the federal or state government, as appropriate, of reclaimed uranium mill tailings sites to ensure long-term stability.

In comparing self-bonding regulations with the guidelines proposed herein, a number of important considerations should be kept in mind. First, the Board of Oil Gas and Mining oversees a relatively small number of operations. As a result, it is easier for the Board to make decisions on a case-by-case basis. In addition, the purpose of the Mined Land Reclamation Act is to require reclamation of disturbed lands, after which the operator will be under no further obligation insofar as involvement with the reclaimed lands is concerned. This means that the financial burdens surrounding reclamation will essentially disappear after the reclamation is complete.

The proposed guidelines are designed for mine operations. Because of the unique problems and circumstances surrounding uranium mill tailings reclamation, uranium mill tailings reclamation sureties should be governed by a different set of procedures. It may be advisable to consider separate surety regulations relating to uranium mills in order to be consistent with the NRC regulations once they have been published.



UTAH BOARD OF OIL, GAS AND MINING

PROPOSED GUIDELINES FOR SURETY CONTRACTS TO  
GUARANTEE RECLAMATION OBLIGATIONS

(RULE M-5A)

Utah Code Ann. § 40-8-14

RULE M-5A - SURETY CONTRACTS.

- (a) An application for surety contract shall contain the following information:
- (1) Identification of operator.
  - (2) Identification of operation(s).
  - (3) Identification of record mineral owner(s) of land(s) to be mined.
  - (4) Estimated reclamation costs.
  - (5) Nature of activity(ies) or obligation(s) to be covered by contract, including dates of commencement and conclusion. The requirement may be satisfied by reference to the approved reclamation by plan or plans, as appropriate.
  - (6) Other sureties or bonds in the State of Utah.
  - (7) If the applicant is a publicly held corporation,
    - (i) A copy of the latest 10-K report submitted to the United States Securities and Exchange Commission.



- (ii) Any other required report or registration statement submitted by the applicant to the United States Securities and Exchange Commission and the Utah Securities Commission within the preceding year.

If the applicant is not a publicly-held corporation,

- (i) A financial statement prepared by an independent certified public accountant under generally accepted accounting principles.
- (8) A description of the facilities, equipment and material in applicant's possession or control, or available to applicant to carry out reclamation work. This requirement may be satisfied by referring to the applicable portion of the approved reclamation plan or plans covering the reclamation.

(b) Applicant shall submit the following annual reports to the Division:

- (1) If applicant is a publicly-held corporation, a copy of the applicant's latest 10-K report submitted to the United States Securities and Exchange Commission.
- (2) If applicant is not a publicly held corporation, a copy of a current financial statement prepared and certified by an independent certified public accountant under generally accepted accounting principles.



(c) The Board shall approve an application for surety contract if the application and supporting materials demonstrate the following:

- (1) Applicant has net working capital and tangible net worth sufficient to satisfy the reclamation obligations.
- (2) Applicant has sufficient assets (both real and personal property) in the State of Utah to satisfy a judgment for the costs of reclamation.
- (3) Applicant has sufficient staff expertise available to carry out and/or supervise the required reclamation work. Supervision includes the capability to contract all or part of the required reclamation work to other parties.

(d) Upon approval of the application by the Board, the Board and the applicant shall execute a surety contract establishing the following terms and conditions:

- (1) The duration of the obligation.
- (2) The estimated reclamation costs, with the provision that the estimated costs may be adjusted periodically by the Division after notice to the applicant and opportunity for hearing before the Board, if requested by the applicant.
- (3) A reference to the reclamation plan or plans covered by the obligation.



- (4) The procedures for invoking the obligation if the reclamation plan or plans are not followed in whole or in significant part.
- (e) The Board may disapprove an application for surety contract or revoke or substantially modify a contract only after thirty days' notice to the operator and after allowing the operator a hearing on the record before the Board, if the operator so desires. In such a hearing, the operator shall have the right to call and cross-examine witnesses and present such credible evidence as it may deem necessary to support the contract.